

Honorable Thomas S. Zilly

U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

STRIKE 3 HOLDINGS, LLC,)	Case No.: 2:17-cv-01731-TSZ
)	
Plaintiff,)	
)	COUNTERCLAIMS OF DEFENDANT
vs.)	JOHN DOE subscriber assigned IP
)	address 73.225.38.130
JOHN DOE subscriber assigned IP)	
address 73.225.38.130,)	
)	
Defendant.)	DEMAND FOR JURY TRIAL
)	
_____)	
)	
JOHN DOE subscriber assigned IP)	
address 73.225.38.130,)	
)	
Counterclaimant,)	
vs.)	
)	
STRIKE 3 HOLDINGS, LLC,)	
)	
Counterdefendant.)	
)	
_____)	

COMES NOW, the Defendant/Counterclaimant, JOHN DOE subscriber assigned IP address 73.225.38.130 (“DOE”) by and through its counsel of record, hereby counterclaims against Plaintiff STRIKE 3 HOLDINGS, LLC, (“S3H”) on the grounds and praying for the relief hereinafter set forth and further files these counterclaims:

COUNTERCLAIMS OF THE DEFENDANT

By JOHN DOE subscriber assigned IP address 73.225.38.130

1. This lawsuit is premised on two flawed principles. First that the monitoring software used to detect the “infringers” is accurate. Second, even if the infringements passed through an IP address, that they can pinpoint the individual with any accuracy due to the nature of the technology involved.

2. Further, not a single individual involved in the investigation of the alleged infringements is a licensed private investigator in the State of Washington.

3. DOE is a retired ex-cop whose beat was in the Seattle area. He is in his 70’s and is married. He spent his life protecting law abiding citizens against criminals, now he must deal with this frivolous lawsuit.

Count I – Declaratory Judgment of Non Infringement

4. DOE realleges paragraphs 1-3 above as fully set forth herein.

5. S3H has accused DOE of infringement of a number of copyrighted works that they allegedly own.

6. DOE’s did not infringe the works at issue in this case, or any works marketed under the *Vixen*, *Tushy*, and *Blacked*, websites.

7. A case and controversy now exists between S3H and DOE regarding the alleged infringement of the works at issue.

8. DOE requests that the Court entered a judgment that DOE did not infringe any of the works owned by S3H.

Count II – Negligent Infliction of Emotional Distress

9. DOE realleges paragraphs 1-8 above as fully set forth herein.

10. S3H's software and infringement detection methodology is untested, inaccurate, and cannot determine an infringer with any known accuracy.

11. Despite knowing the inaccurate nature of their infringement detection and identification system, S3H has sued hundreds of defendants.

12. S3H has a duty of care before filing to ensure that they can identify an infringer with sufficient accuracy to avoid naming innocent parties.

13. It is reasonably foreseeable that when people are inaccurately identified and then subjected to the legal system, they would have emotional distress.

14. DOE was improperly identified.

15. DOE suffered emotional distress which was a direct and foreseeable result of the improper identification by Plaintiff's software and infringement detection methodology.

Count III – Outrage

16. DOE realleges paragraphs 1-15 above as fully set forth herein.

17. S3H's software and infringement detection methodology is untested, inaccurate, and cannot determine an infringer with any known accuracy.

18. Despite knowing the inaccurate nature of their infringement detection and identification system, S3H has recklessly sued hundreds of defendants.

19. S3H has a duty of care before filing to ensure that they can identify an infringer with sufficient accuracy to avoid naming innocent parties.

20. There is a high degree of probability that when people are inaccurately identified and then subjected to the legal system, they would have emotional distress, despite this S3H proceeded in a deliberate disregard in a reckless manner

21. DOE was improperly identified.

22. DOE suffered emotional distress which was a direct and foreseeable result of the improper identification by S3H's software and infringement detection methodology.

DOE'S PRAYER FOR RELIEF

DOE respectfully prays and judgment entered as follows:

COUNT I – Declaratory Judgment of Non Infringement

- A. That S3H's claims for infringement be denied in their entirety and take nothing;
- B. DOE is the prevailing party under the Copyright Act;
- C. DOE be entitled to statutory attorney fees under the Copyright Act;
- D. DOE be entitled to costs of suit; and
- E. DOE be entitled to any other relief that this Court may allow.

COUNT II – Negligent Infliction of Emotional Distress

- A. Non-economic Damages of at least \$ 5,000.00; and
- B. Attorney fees as allowed per statute, and
- C. DOE be entitled to costs of suit; and
- D. DOE be entitled to any other relief that this Court may allow.

COUNT III – Outrage

- A. Non-economic Damages of at least \$ 7,500.00; and
- B. Attorney fees as allowed per statute, and
- C. DOE be entitled to costs of suit; and
- D. DOE be entitled to any other relief that this Court may allow.

Respectfully submitted,

Dated: March 8, 2018

/s/ J. Curtis Edmondson
Attorney for DOE

CERTIFICATE OF SERVICE

I, J. Curtis Edmondson, hereby certify that on March 8, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Attorneys for Plaintiff Strike 3 Holdings LLC

DATED this 8th day of March, 2018.

By: /s/ J. Curtis Edmondson
J. Curtis Edmondson